

Department of Legislative Services
Maryland General Assembly
2017 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

House Bill 1349

(Delegate Robinson)

Environment and Transportation and
Economic Matters

Education, Health, and Environmental Affairs
and Finance

**Environment - Compostable, Degradable, and Biodegradable Plastic Products -
Labeling**

This bill establishes a general prohibition on selling a plastic product that is labeled as biodegradable, degradable, decomposable, or any other term that implies that the product will break down, fragment, biodegrade, or decompose in a landfill or any other environment. In addition, beginning October 1, 2018, unless a product meets specified standards, a person is prohibited from (1) selling a “plastic product” in the State that is labeled as compostable or home compostable or (2) selling a “film plastic product” labeled as “soil degradable AG mulch film” or “biodegradable mulch film.” Also beginning October 1, 2018, a person who sells or distributes a compostable plastic bag or a compostable “food or beverage product” that is intended for sale or distribution by a retailer in the State must ensure that the bag or product meets specified labeling requirements. The bill establishes civil penalties for violations.

Fiscal Summary

State Effect: The bill is not expected to materially affect State finances or operations, assuming the Maryland Department of the Environment (MDE) is not responsible for enforcement.

Local Effect: Local expenditures may increase to enforce the bill. Local revenues may increase minimally due to the bill’s penalty provisions. Local governments that own or operate composting facilities may benefit from the enhanced ability to distinguish compostable from noncompostable plastics.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary:

Relevant Definitions

A “plastic product” means a product made of plastic, whether alone or in combination with another material including paperboard; it includes a package or packaging component, a film plastic product, a food or beverage product, and any other plastic product or part of a plastic product. However, the term does not include specified personal care products.

“Soil degradable AG mulch film” or “biodegradable mulch film” is a film plastic product used as a technical tool in commercial farming that biodegrades in soil after being used and meets specified standards.

The bill establishes several definitions for standard specifications set by the American Society for Testing and Materials (ASTM).

Required Standards

Beginning October 1, 2018, a person may not sell in the State a plastic product that is labeled as (1) compostable, unless it meets specified ASTM standards and any applicable labeling guidelines in the federal Guides for the Use of Environmental Marketing Claims, and (2) home compostable, unless it meets the OK Compost Home certification standard adopted by Vincotte and any applicable labeling guidelines in the federal Guides for the Use of Environmental Marketing Claims. “Vincotte” is the Belgian-accredited inspection and certification organization.

Beginning October 1, 2018, a person may not sell in the State a film plastic product labeled as soil degradable AG mulch film or biodegradable mulch film unless the product (1) meets the OK Biodegradable Soil certification standard adopted by Vincotte or shows (at ambient temperatures and in soil) at least 90% biodegradation absolute or relative to microcrystalline cellulose in less than two years’ time, tested according to specified test methods and (2) fulfills the plant growth and regulated metals requirements under a specified section of a specified ASTM standard specification.

Labeling Requirements

Beginning October 1, 2018, a person may only distribute or sell a compostable bag that is intended for sale or distribution by a retailer in the State if the bag is labeled as follows: (1) in a manner that is readily and easily identifiable from other plastic bags; (2) in a manner that is consistent with the federal Guides for the Use of Environmental Marketing Claims;

(3) with a certification logo indicating the bag meets a specified ASTM standard specification; and (4) with the word “COMPOSTABLE” and meets specified color, font, size, and other requirements, as specified. A compostable plastic bag that is sold or distributed in the State may not be labeled as recyclable.

Beginning October 1, 2018, a person may only distribute or sell a compostable food or beverage product that is intended for sale or distribution by a retailer in the State if the product is labeled (1) in a manner that is readily and easily identifiable from other food or beverage products; (2) in a manner that is consistent with the federal Guides for the Use of Environmental Marketing Claims; and (3) with a certification logo that indicates that the product meets specified ASTM standards or as compostable.

Penalties

A person who violates the bill’s provisions is subject to a civil penalty of \$500 for a first violation, a civil penalty of \$1,000 for a second violation, and a civil penalty of \$2,000 for a third and subsequent violation. Any penalties collected under the bill’s provisions are paid to the county, municipality, or other local government that brought the enforcement action.

Current Law/Background: There is no specific State law or regulation that relates to labeling plastic products as biodegradable, degradable, or decomposable.

Broad Overview of Waste Management and Recycling in the State

The solid waste infrastructure in Maryland consists of both permitted and nonpermitted facilities, and solid waste is managed through a combination of recycling, composting, landfilling, energy recovery, and exporting for disposal or recycling. Privately and county-owned facilities make up the majority of facilities in the State. Historically, according to MDE, recycling facilities have not been required to obtain refuse disposal permits. However, as more recycling facilities are processing substantial quantities of solid waste and the uses and size of anaerobic digestion facilities increase, there has been some interest in clarifying the circumstances in which recycling facilities require a refuse disposal permit.

Composting in Maryland

Composting is the biological decomposition of organic matter under controlled thermophilic aerobic conditions (growing best in a warm environment). In July 2015, MDE implemented regulations that established requirements for constructing and operating composting facilities in the State, as required by Chapter 686 of 2013, which was a stated objective of the Zero Waste Plan, a statewide strategy to focus on recycling and

increase emphasis on source reduction and reuse landfills. Further, in spring 2016, MDE created a general permit for composting and has begun to issue permits for these facilities. The general permit allows for an easier and more streamlined application and permit process to promote composting in the State.

Model Compostable Plastics Labeling Legislation

MDE advises that the U.S. Composting Council (USCC) has published model compostable plastics labeling legislation which is available [online](#) and is similar to the bill. MDE also notes that California has enacted biodegradable and compostable plastic labeling provisions that are similar to the USCC model and the bill; the California law references the same ASTM and Vincotte standards for compostability but also provides a process for CalRecycle (California's Department of Resources Recycling and Recovery) to review changes to the standards and to specify an alternative standard that is more stringent. The California law also addresses recycled content claims for plastic food containers, whereas the USCC model and the bill do not.

Environmental Marketing and American Society for Testing and Materials Standards

The Federal Trade Commission provides guidance on what constitutes deceptive environmental marketing with respect to compostable and biodegradable claims.

According to its [website](#), ASTM International is a globally recognized leader in the development and delivery of voluntary consensus standards; there are more than 12,000 ASTM standards. According to its [website](#), Vincotte offers professional and innovative services in the field of certification, conformity assessment, advice, and training. ISO, or the International Organization for Standardization, is an independent, nongovernmental international organization that has published more than 21,000 International Standards and related documents covering almost every industry.

Local Fiscal Effect: Because civil penalty revenue is directed to the local government that brought the enforcement action, it is assumed that local governments are primarily responsible for enforcement of the bill's prohibitions and labeling requirements. Thus, local government expenditures may increase to enforce the bill. Local revenues may increase from any successful enforcement actions that result in fine revenue.

MDE advises that local governments that own or operate composting facilities may benefit from the enhanced ability to distinguish compostable from noncompostable plastics. MDE further notes that plastic bags can create operational and product quality issues for composting facilities. Incoming feedstocks in plastic bags must be debagged or shredded prior to composting, which is labor-intensive if done manually, and can be hard on equipment and create blowing plastic debris if done mechanically. Noncompostable plastic

bags can also be screened from finished compost, but it can be difficult to fully remove the plastic, which can lead to diminished product quality. Plastic bags that are truly compostable can address some of these issues, but it can be difficult for consumers and composting operators to distinguish compostable from noncompostable plastic bags due to either a lack of labeling or because of misleading or confusing labeling. The same issue exists for plastic food service ware. Some local governments, such as Prince George's County and the City of Annapolis, have prohibited the use of plastic bags for the collection of residential yard waste. Composting facilities vary as to whether they accept compostable plastic food service ware.

Small Business Effect: The bill's prohibitions and labeling requirements may have a meaningful impact on small businesses that sell or distribute affected plastic products. Affected small businesses may need to cease selling affected products, alter the labeling of affected products, and/or ensure that affected products meet the standards outlined in the bill. However, because the bill's prohibitions and labeling provisions do not take effect until October 1, 2018, these entities have an opportunity to phase out existing stock.

Composting businesses, which may be small businesses, may benefit from the enhanced ability to distinguish compostable from noncompostable plastics.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Harford and Montgomery counties; City of College Park; Maryland Department of the Environment; Department of Legislative Services

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